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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
|-----------------|-------------|----------------------|---------------------|------------------|

10/560,948

12/15/2005

Hans-Dieter Dubs

2693-000015/US/NP

1702

27572 7590 07/07/2010  
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EXAMINER

SMALLEY, JAMES N

ART UNIT

PAPER NUMBER

3781

MAIL DATE

DELIVERY MODE

07/07/2010

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

|                              |                                      |                                    |  |
|------------------------------|--------------------------------------|------------------------------------|--|
| <b>Office Action Summary</b> | <b>Application No.</b><br>10/560,948 | <b>Applicant(s)</b><br>DUBS ET AL. |  |
|                              | <b>Examiner</b><br>JAMES N. SMALLEY  | <b>Art Unit</b><br>3781            |  |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 18 May 2010.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1,2,5-8 and 11-23 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-2,5-8 and 11-23 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 18 May 2010 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948)                        | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

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## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on May 18, 2010 has been entered.

### ***Drawings***

2. The drawings were received on May 18, 2010. These drawings are accepted.

### ***Claim Objections***

3. Claim 13 is objected to because of the following informalities: "a least" should be "at least." Appropriate correction is required.

### ***Claim Rejections - 35 USC § 112***

4. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

5. Claim 20 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

To the best degree the Examiner understands the claimed invention, a thinner wall segment is only provided when the cap is made of some other material than sheet aluminum, such as plastic. The embodiment forming the cap of sheet aluminum is taught to be provided with the flanged region.

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Therefore, there does not appear to be support in the Specification for an embodiment having a flanged region AND a region with a thinner wall segment.

6. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

7. Claims 18-19 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

**Regarding claim 18**, it is not clear what the substantially-constant cross-section comprises.

Examiner assumes this means the wall thickness of the neck is constant; however, clarification is requested.

**Regarding claim 19**, it is not clear how the cap is disposed between the cam and the mouth. At best, the cap surrounds the mouth. Given that the cam is integrally formed on the container neck, it is not clear how anything can be inserted between it, and the mouth.

### ***Claim Rejections - 35 USC § 102***

8. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

9. Claims 1-2, 5-8 and 11-21 are rejected under 35 U.S.C. 102(b) as being anticipated by Spatz CA 2,122,565.

Spatz '565 teaches a closure cap having a bottom (3) for covering the mouth, a jacket (5), and a guarantee (9) which includes vertical cuts (49) and an area of reduced wall thickness (47). Because the claim is only drawn to a capping system for a container including a mouth, the prior art must only teach the cap, and be capable of being used in the intended manner. Structural elements of the container are only treated to the degree the prior art is capable of performing as intended. It has been held that a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not

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differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations. *Ex parte Masham*, 2 USPQ2d 1647 (1987). Furthermore, if a prior art structure is capable of performing the intended use as recited in the preamble, then it meets the claim. See, e.g., *In re Schreiber*, 128 F.3d 1473, 1477, 44 USPQ2d 1429, 1431 (Fed. Cir. 1997).

**Regarding claim 2**, the area of reduced thickness (47) is located between at least two cuts (49), as clearly shown in figure 2.

**Regarding claims 5-8**, the claims all contain limitations drawn to the container. Examiner asserts that because the container was not positively claimed in the preamble of claim 1, that the structural elements of the container need not be taught by the prior art.

**Regarding claim 11**, Examiner reads rib (15) as the flanged region. Noting figure 2, the folding fingers interrupt here, which would allow clearance for a cam.

**Regarding claims 12 and 16-19**, the claims all contain limitations drawn to the container. Examiner asserts that because the container was not positively claimed in the preamble of claim 1, that the structural elements of the container need not be taught by the prior art.

**Regarding claim 13**, the guarantee includes at least one cut (49).

**Regarding claim 14**, the guarantee will fracture at cut (49).

**Regarding claim 15**, the cuts are vertically oriented, and thus parallel to a longitudinal axis of the cap.

**Regarding claim 20**, the flanged region includes an area of reduced wall thickness (47).

**Regarding claim 21**, the guarantee includes three cuts (49).

10. Claims 11-12 and 16-19 are rejected under 35 U.S.C. 102(b) as being anticipated by Lunn US 2,069,075.

**Regarding claim 11**, Lunn '075 teaches a cap (18) which includes a bottom (unlabeled; read to the top surface of the closure cap), a jacket (unlabeled; read to be the sidewall of the closure cap) and a guarantee which includes a flanged region (9) surrounding a cam (15).

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**Regarding claim 12**, turning the cap forces the flanged region (9) outwardly, as described in column 2 of page 1 of the description, at lines 44-49.

**Regarding claims 16-17**, the cam is shaped like an upside-down triangle, and thus has sloped surfaces on either side. Because the cap is “pressed in known manner in close contact with the bottle to make a tight seal with the continuous sealing edge 14, 16 (page 1, column 2, lines 41-44), it will inherently be in contact with the sloped surface before, and during rotation.

**Regarding claim 18**, the container neck appears to have a substantially-constant cross-section between the cam and the mouth, as shown in figure 1.

**Regarding claim 19**, to the best degree the Examiner understands the claimed invention in view of the rejection of this claim under 35 U.S.C. 112, 2<sup>nd</sup> paragraph, above, the cap is as disposed between the cam and the mouth as the instant invention.

11. Claims 11-19 and 21-23 are rejected under 35 U.S.C. 102(b) as being anticipated by Kutcher US 3,601,273.

**Regarding claim 11**, Kutcher '273 teaches a cap (9) which includes a bottom (10), a jacket (11) and a guarantee (17) which includes a flanged region (25). Because the claim is only drawn to a capping system for a container including a mouth, the prior art must only teach the cap, and be capable of being used in the intended manner. Structural elements of the container are only treated to the degree the prior art is capable of performing as intended. It has been held that a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations. *Ex parte Masham*, 2 USPQ2d 1647 (1987). Furthermore, if a prior art structure is capable of performing the intended use as recited in the preamble, then it meets the claim. See, e.g., *In re Schreiber*, 128 F.3d 1473, 1477, 44 USPQ2d 1429, 1431 (Fed. Cir. 1997).

**Regarding claims 12 and 16-19**, the claims all contain limitations drawn to the container. Examiner asserts that because the container was not positively claimed in the preamble of claim 1, that the structural elements of the container need not be taught by the prior art.

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**Regarding claim 13**, the reference teaches cuts (18).

**Regarding claim 14**, the reference teaches the cuts are ruptured upon unscrewing of the cap, in col. 4, lines 4-8.

**Regarding claim 15**, the score lines are vertical, and thus parallel to a longitudinal axis of the cap.

**Regarding claim 21**, the flanged region is annular, and thus a portion of it is disposed circumferentially between two adjacent cuts.

**Regarding claim 22**, the distal end of the ring is bent towards the container, as clearly shown in figures 2 and 3.

**Regarding claim 23**, the claim can be broadly read such that a portion of the entire annular flanged region is selected - - perhaps 180 degrees worth - - and calling diametrically-opposed end points the first and second portions. Thus, a cam disposed between these points would meet the claimed limitation. Examiner notes the claim does not limit that the other portions of the guarantee are folded in a greater distance than the flanged region.

### ***Response to Arguments***

12. Applicant's arguments with respect to claims 1-3, 5-8 and 11-21 have been considered but are moot in view of the new ground(s) of rejection.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JAMES N. SMALLEY whose telephone number is (571)272-4547. The examiner can normally be reached on Monday - Friday 10 am - 7 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anthony Stashick can be reached on (571) 272-4561. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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3781

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